

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHARLES B. RICE, SR., CATHERINE B. RICE and
BARKSTON PROPERTIES, LLC,

Plaintiffs,

v.

LSREF3 SAPPHIRE TRUST 2014 and LSREF3
SAPPHIRE, LLC,

Defendants.

Case Number: 14 CH 15973

DEFENDANT’S NOTICE OF REMOVAL OF CIVIL ACTION

Defendants, LSREF3 SAPPHIRE TRUST 2014, as successor in interest to LSREF3 Sapphire, LLC, as successor in interest to BMO Harris Bank N.A. f/k/a Harris N.A., and LSREF3 SAPPHIRE, LLC, as successor in interest to BMO Harris Bank N.A. f/k/a Harris (collectively “*Defendants*”), by and through their counsel, Chapman and Cutler LLP, and pursuant to the provisions of 28 U.S.C. §§ 1332, 1441 and 1446, hereby give notice of removal of this action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois. In support of this Notice of Removal, Defendants show the Court the following:

I. INTRODUCTION

1. On or about October 2, 2014, Plaintiffs filed a summons and complaint in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, as Case No. 14 CH 15973 (the “*State Court Action*”). A true and correct copy of the complaint (the “*Complaint*”) is attached to this Notice as Group Exhibit A.

2. The Complaint was served on Defendants’ counsel on October 3, 2014.

3. The Complaint alleges claims for declaratory judgment and injunctive relief as a result of an alleged breach of contract by Defendants. (Exhibit A, Complaint, pp. 13-14, 16-17).

4. This action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because (a) there is complete diversity of citizenship, and (b) the matter in controversy exceeds \$75,000.00.¹ Removal is proper pursuant to 28 U.S.C. § 1441(a).

II. CITIZENSHIP OF PLAINTIFFS

5. This action involves three Plaintiffs and two Defendants. With respect to the Plaintiffs' citizenship, all factual allegations are based upon information provided by the Plaintiffs and upon information and belief after investigation.

A. Citizenship of Plaintiffs Charles B. Rice, Sr. and Catherine B. Rice

6. Plaintiff Charles B. Rice, Sr. ("*Charles*") is an individual citizen of the State of Georgia. *See* Exhibit A, Complaint, ¶ 4.

7. Plaintiff Catherine B. Rice ("*Catherine*") is an individual citizen of the State of Georgia. *See* Exhibit A, Complaint, ¶ 5.

B. Citizenship of Barkston Properties, LLC

8. Plaintiff Barkston Properties, LLC ("*Barkston*") is a Georgia limited liability company. *See* Exhibit A, Complaint, ¶ 6. "The citizenship of a limited liability company is that of its members, and its members may include partnerships, corporations, and other entities that have multiple citizenships" *Hicklin Eng'g, L.C. v. Bartell*, 439 F.3d 346, 347 (7th Cir. 2006).

¹ The State Court action requests injunctive relief in relation to the sale of a property valued in excess of five million dollars (\$5,000,000.00). The Forbearance Agreement and accompanying documents upon which Plaintiff seeks declaratory judgment are in relation to debt owed Defendants by Plaintiffs in excess of eight million dollars (\$8,000,000.00).

(a) Barkston has the following members with the indicated states of citizenship:

- i. Kimberly E. Civins, a citizen of Georgia.

III. CITIZENSHIP OF DEFENDANTS

A. Citizenship of LSREF3 Sapphire Trust 2014

9. Defendant LSREF3 Sapphire Trust 2014 is a Delaware statutory trust. The citizenship of a trust is that of its trustee(s). *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458 (1980). U.S. Bank Trust National Association is the sole Trustee, and is a citizen of the state of Delaware.

B. Citizenship of LSREF3 Sapphire LLC

10. Defendant LSREF3 Sapphire LLC is a Delaware limited liability company. “The citizenship of a limited liability company is that of its members, and its members may include partnerships, corporations, and other entities that have multiple citizenships” *Hicklin*, 439 F.3d at 347.

(a) LSREF3 Sapphire LLC has the following members:

- i. LSREF3 Sapphire HoldCo, LLC, a Delaware limited liability company which has one member, LSREF3 Sub Holdings, LLC.
 - a. LSREF3 Sub Holdings, LLC, a Delaware limited liability company, has two members: LSREF3 Super REO Holdings, LLC, a Delaware limited liability company, and LSREF3 Super Loan Holdings, Ltd., a Bermuda corporation.

- (i). The sole member of LSREF3 Super REO Holdings, LLC is LSREF3 Super Partners, Ltd., a Bermuda corporation.

IV. REMOVAL IS PROPER

11. Thus, on information and belief after investigation, Plaintiffs are citizens of Georgia. Defendants are citizens of Delaware and Bermuda.

12. Removal is proper pursuant to 28 U.S.C. § 1441(a). This action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because: (a) there is complete diversity of citizenship, and (b) the matter in controversy exceeds \$75,000.00.

13. Removal is also proper pursuant to 28 U.S.C. § 1441(b)(2) because Defendants are not a citizen of the State of Illinois.

14. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendant in the State Court Action are attached hereto as Group Exhibit A.

15. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) as it is filed within 30 days of service of the Complaint in the State Court Action on the Defendants.

16. Removal to this Court is proper because this Court is the District Court for the United States embracing the place where the State Court Action is pending and is, thus, the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

17. Removal to this Court is proper given that the subject loan documents at issue reveal that the parties contemplated the Northern District of Illinois as the proper forum. A true and accurate copy of the subject Term Loan Agreement executed by Barkston and the Guaranty Agreement executed by Charles and Catherine (together with the Term Loan Agreement and all accompanying related documents, the “*Loan Documents*”) are attached here to as Group Exhibit B.

18. Pursuant to the Loan Documents, Barkston, Charles, and Catherine “submit[s] to the nonexclusive jurisdiction of the United States District Court for the Northern District of Illinois...and waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court...” *See* Exhibit B, Term Loan Agreement, p. 26, ¶ 10.14, Guaranty Agreement, p. 6, ¶19.

19. Promptly after filing this Notice of Removal, written notice of removal will be given to Plaintiffs through their attorneys of record in the State Court Action and to the Clerk of the Court in the State Court Action, as required by 28 U.S.C. § 1446(d).

20. By filing this Notice of Removal, Defendant does not waive and hereby expressly reserves the right to assert all available defenses and motions.

Dated: October 31, 2014

LSREF3 SAPPHIRE TRUST 2014, as successor in interest to LSREF3 Sapphire, LLC, as successor in interest to BMO Harris Bank, N.A. f/k/a Harris N.A. and LSREF3 SAPPHIRE LLC, as successor in interest to BMO Harris Bank N.A., f/k/a Harris N.A.

By /s/ Mia D. D’Andrea
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 31, 2014 she served a true and correct copy of the foregoing **DEFENDANT’S NOTICE OF REMOVAL OF CIVIL ACTION** upon Plaintiffs’ attorney via First Class United States Mail with adequate postage addressed as follows:

Jonathan W. Young
Thomas I. Matyas
EDWARDS WILDMAN PALMER LLP
225 West Wacker Drive, Suite 3000
Chicago, Illinois 60606

/s/ Mia D. D’Andrea
Mia D. D’Andrea